### D.T.E. 97-115

Petition of Fitchburg Gas and Electric Light Company, pursuant to General Laws, Chapter 164, §§ 1, 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

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### INITIAL ORDER ON RESTRUCTURING PLAN

### I. INTRODUCTION

On December 31, 1997, pursuant to "an act relative to restructuring the electric utility industry in the Commonwealth, regulating the provision of electricity and other services, and promoting enhanced consumer protection therein" ("Act"), St. 1997, c. 164, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed with the Department of Telecommunications and Energy ("Department") a petition for approval of its electric restructuring plan ("Plan") to become effective March 1, 1998. The Department docketed the petition as D.T.E. 97-115.

Pursuant to notice duly issued, the Department held a public hearing in Fitchburg on January 22, 1998, to afford interested persons an opportunity to be heard. In accordance with the notice, the Company and the Attorney General filed comments on the Plan. On February 5, 1998, the Department conducted a procedural conference to establish a schedule for review of the Company's restructuring plan.<sup>1</sup>

The Department granted the petitions for leave to intervene or participate filed by Boston Edison Company; ComEnergy Services Company (filed jointly on behalf of Cambridge Electric Light Company, Canal Electric Company, and Commonwealth Electric Company); Division of Energy Resources; Eastern Edison Company; Energy Express; Enron Energy Services Company; the National Consumer Law Center, Inc., (representing Action, Inc., Massachusetts Energy Directors Association, Massachusetts Community Action Association, Massachusetts Senior Action Council and Cape Organization for Rights of the Disabled); Pinetree Power Fitchburg LLP; and Western Massachusetts Electric Company. The Attorney General of the Commonwealth ("Attorney General") intervened as of right pursuant to G.L. c. 12, § 11E.

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### II. DESCRIPTION OF THE PLAN

Fitchburg states that its restructuring plan contains the elements specified under the Act (Plan, Tab A at 2-6). Specifically, the Company contends that the filing (1) provides for a 10 percent rate reduction; (2) is designed to implement a restructured electric generation market; (3) provides customers with retail access; (4) includes an estimate and detailed accounting of total transition costs eligible for recovery; (5) sets forth a description of the strategies to mitigate such transition costs; (6) includes unbundled prices or rates for generation, distribution, transmission, and other services; (7) documents the proposed charges for recovery of transition costs; (8) includes proposed programs to provide universal service for all customers; (9) includes proposed programs and recovery mechanisms to promote energy conservation and demand-side management; (10) sets forth procedures for ensuring direct retail access to all electric generation suppliers; and (11) discusses the impact of the plan on the Companies' employees and the communities served (<u>id.</u>). Additionally, in accordance with the divestiture requirements of the Act, St. 1997, c. 164, § 193 (G.L. c. 164, § 1(A)(b)(3)), Fitchburg intends to sell its generating facilities to an unaffiliated third party after a competitive auction or sale, and apply the proceeds from the sale towards reducing the amount of the Company's transition costs (id. at 3).

Fitchburg proposes to calculate the 10 percent rate reduction by adjusting the base rates currently in effect<sup>2</sup> and the fuel and conservation charges in effect in August 1997 (<u>id.</u>, Tab D,

The Company's proposed rate design begins with unbundled rates as filed on (continued...)

at IV.6). Moreover, the Company proposes to reduce the total monthly customer charge (defined as the sum of the monthly service charge and energy conservation service charge) for each rate class by 10 percent while maintaining the base distribution revenue (<u>id.</u>, Tab D, at IV.6-IV.7).

In addition to the charges discussed above, the Company's rate design includes internal and external transmission charges, a New England Power Pool transmission facilities credit, a Seabrook amortization surcharge, an access charge, and a generation (standard offer service) charge (<u>id.</u>, Tab H).<sup>3</sup>

For those ratepayers who choose to remain customers of Fitchburg, the Company proposes to provide its standard offer service over a seven-year period beginning in 1998 at 2.8 cents per kilowatthour ("KWH"), escalating at preset levels through 2004 (<u>id.</u>, Tab D at I.2, V.1-V.2). Fitchburg proposes to use its current supply portfolio and short-term market

<sup>&</sup>lt;sup>2</sup>(...continued)

March 3, 1997, pursuant to the Department's rate unbundling case, D.P.U. 97-44. The purpose of that case was to provide customers with revenue-neutral unbundled bills for illustrative purposes, and did not change the bundled tariffs in effect. D.P.U. 97-44, at 3 (1997).

The Company also proposes to remove restrictions against taking service from alternative suppliers for customers served pursuant to (1) the Energy Bank Service ("EBS") Rate, (2) special contracts providing for traditional power supply, and (3) special contracts providing for market-based power supply. Specifically, should these ratepayers choose to remain with Fitchburg, the Company proposes to offer default service to EBS customers and those with special contracts who are supplied with market-based power. The Company would offer standard offer service to those customers with special contracts who are supplied with traditional power (Plan, Tab D at VII.12-13).

purchases to provide standard offer service from March 1, 1998 through

December 31, 1998 (id. at V.2). In July 1998, the Company plans to initiate the procurement process for standard offer service by issuing a Request for Qualifications ("RFQ") (id. at V.2, Tab J). The Company intends to award permanent standard offer service supply contracts by January 1, 1999 (id. at V.2). The Company states that this timeframe is consistent with the closing date of the divestiture of the Company's generation assets and supply contracts (id.).

The Company proposes to provide default service to those ratepayers who have chosen retail electricity from an alternative supplier, but who, for whatever reason, have stopped receiving such service, and to all customers at the end of the term of standard offer service (id. at V.6). Fitchburg initiated a procurement process for a six-month fixed price default service power supply contract by issuing an RFQ in January 1998 (id.). The Company intends to issue a Request for Proposals every six months thereafter for six-month fixed price default service requirements (id.).

Fitchburg proposes to recover net, non-mitigable transition costs through a non-bypassable charge applied to all customers taking distribution service (<u>id.</u> at II.1). The Company differentiates transition costs between those that are fixed and those that are variable. According to Fitchburg, the fixed component of transition costs includes unrecovered generation plant balances and regulatory assets. Variable transition costs include (1) above-market payments to power suppliers, (2) nuclear decommissioning costs, (3) payments in lieu of taxes relating to generation, (4) mitigation incentive costs, and (5) employee severance and retraining costs relating to restructuring and divestiture (<u>id.</u> at II.1-2; VIII.1). The Company

proposes to amortize the fixed costs over a 12-year period and recover the variable costs over the life of the obligation (<u>id.</u>, Tab B at 3). The Company has included an accounting of its transition costs including the calculation of both fixed and variable components (<u>id.</u>, Tab E).

To meet the Act's requirement for mitigation of transition costs, the Company plans to divest its portfolio of owned, leased and purchased power supply entitlements, including nuclear assets, through a competitive bid process (<u>id.</u>, Tab D at I.2-I.3). Fitchburg initiated this process in January 1998 (<u>id.</u> at III.2).

Fitchburg proposes to expand the scope of its existing demand-side management ("DSM") programs for residential, small commercial, and industrial customers and plans to file its five-year energy efficiency plan by May 1, 1998 (<u>id.</u> at VI.6). The Company contends that its proposed DSM and renewables funding levels are consistent with those set forth in the Act (id. at VI.1).

With regard to community impact from the restructuring plan, the Company proposes to educate customers through a consumer newsletter, a computer web site, a toll-free information line, participation in the Department's Consumer Education Task Force, press releases and local media interviews, and meetings with community leaders and government officials (id. at VIII.2-VIII.3).

The Department notes that the Consumer Education Task Force is now chaired by the Division of Energy Resources.

# III. COMMENTS

# A. The Attorney General

According to the Attorney General, Fitchburg's proposed plan does not adequately address the issues mandated by the Act. Specifically, the Attorney General claims that by proposing to recoup the unamortized balance of the Seabrook amortization surcharge as a component of the distribution charge billed to consumers, the Company understates its transition charge and increases the carrying cost rate that it would be permitted to earn on the unamortized balance of its stranded costs (Attorney General Comments at 3). Moreover, the Attorney General states that Fitchburg's transition charge is inconsistent with the Act since it includes going-forward generating costs, which are beyond those considered eligible for inclusion as transition costs (id. at 4). Finally, the Attorney General states that the pricing proposed by Fitchburg for standard offer service is not required by the Act and is inconsistent with the means by which it proposes to service the load supplied (id. at 5). Instead, the Attorney General submits that the Company should make standard offer service available at the wholesale price at which it will provide a complete backup (id.).

### B. The Company

In response to the Attorney General's claim that the Seabrook Amortization Surcharge is generation-related, Fitchburg states that unlike the regulatory assets included in the transition charge, the Seabrook Amortization Surcharge was the subject of a settlement between the Company and the Attorney General, wherein the charge was designed as a per KWH surcharge to be placed on top of the distribution rates (<u>id.</u> at 4). Regarding the Attorney General's

assertion that the Company is prohibited from recovering its on-going generation related expenses, Fitchburg states that these costs are necessary until the Company divests (<u>id.</u> at 6). In response to the Attorney General's argument that the Company incorrectly priced its standard offer service, Fitchburg contends that the Act does not mandate that a company justify its pricing as long as all customers benefit and the pricing provides a 10 percent rate reduction over August 1997 rates (<u>id.</u> at 8).

## IV. <u>STANDARD OF REVIEW</u>

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 25, §§ 5, 9, 18, 19, and 20; c. 111, §§ 5K and 142N; and c. 164, §§ 1 through 33, 69G through 69R, 71 through 75, and 76 et seq. This authority was most recently revised and augmented by the Act. The primary goal of the Act is to establish a new electric utility "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier" in order to "promote reduced electricity rates." St. 1997, c. 164, § 1.

Among other things, the Act authorizes and directs the Department to "require electric companies organized pursuant to the provisions of [G.L. c. 164] to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section." St. 1997, c. 164, § 193 (G.L. c. 164, 1A(a)). Pursuant to this statutory authority, the Department will review an electric company's restructuring plan

for compliance with applicable provisions of the Act.

The Act sets forth explicit directions for the Department's review of restructuring plans. Plans must contain two key features. First, they must provide, by March 1, 1998, a rate reduction of 10 percent for customers choosing standard offer service from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. <u>Id.</u> Second, each plan must be designed to implement a restructured electric generation market by March 1, 1998 by requiring the electric company to offer retail access to all customers as of that date. <u>Id.</u>

Plans must also include the following nine essential provisions:

- an estimate and detailed accounting of total transition costs eligible for recovery pursuant to G.L. c. 164, § 1G(b);
- (2) a description of the company's strategies to mitigate transition costs;
- (3) unbundled prices or rates for generation, distribution, transmission, and other services;
- (4) proposed charges for the recovery of transition costs;
- (5) proposed programs to provide universal service for all customers;
- (6) proposed programs and mandatory charges to promote energy conservation and demand-side management;
- (7) procedures for ensuring direct retail access to all electric generation suppliers;
- (8) discussions of the impact of the plan on the Company's employees and the communities served by the Company; and
- (9) a mandatory charge per kilowatthour for all consumers to support the development and promotion of renewable energy projects;

G.L. c. 25, § 20(a)(1); G.L. c. 164, § 1A(a).

To allow implementation of retail access for all customers on March 1, 1998, the Department may issue an initial order prior to March 1, 1998, approving any plan filed pursuant to this section, subject to further review and reconciliation. G.L. c. 164, § 1A(a). In an initial order, the Department will make an initial determination whether the restructuring plan proposed by the Company provides the required rate reduction for customers choosing the standard offer service and offers retail access to all customers by March 1, 1998. In an initial order, the Department will also determine whether the restructuring plan proposed by the Company includes the nine important provisions listed above.

In addition, the Department must identify and determine those costs and categories of costs for generation-related assets, investments, and obligations which may be allowed to be recovered through a non-bypassable transition charge authorized to be assessed and collected in accordance with the provisions of the Act. G.L. c. 164, § 1G(a). Transition costs may not be approved by the Department until the Department completes an initial audit of electric company records maintained on file at the Department, including an accounting of all costs eligible for recovery, and no amount shall be collected by a distribution company unless such amount has been approved by the Department. Id. The Department must, no later than December 31, 1998, conduct a comprehensive audit of each distribution company and applicable electric company in order to assure substantial compliance with the provisions of the Act. Id. After further review, the Department will issue an order on whether the electric

company's restructuring plan complies with the Act, including appropriate adjustments and reconciliation, and tariffs reflecting the Department's review.

## V. ANALYSIS AND FINDINGS

As noted, the Act requires a rate reduction of 10 percent for customers choosing standard offer service from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. The Company identified the base rates currently in effect and the fuel and conservation charges in effect in August 1997 as the appropriate reference rates from which to calculate the required reduction. For the purposes of an initial Order, the Department finds that the rates used by the Company in its calculation are the appropriate baseline for determination of the 10 percent rate reduction, and that the Company's restructuring plan, as proposed, provides for a 10 percent rate reduction. Both determinations are subject to further review and reconciliation.

With respect to the requirement to provide retail access to all customers, the Company's restructuring plan provides that, beginning March 1, 1998, customers will have the opportunity to purchase electricity from alternative suppliers. Therefore, the Company's restructuring plan meets the Act's requirement to provide retail access to all customers.

Also, in accordance with the Act, Fitchburg is offering standard offer service and default service beginning March 1, 1998. Procurement of the supply for these services will be

Although the Company based its proposed rate design on rate components that were approved for billing purposes only in D.P.U. 97-44, the design still results in a 10 percent rate reduction.

through competitive bidding, subject to Department review and approval in our final order. For purposes of this initial order, however, the Plan meets the Act's requirement to provide standard offer service and default services to customers, and the rates are approved subject to further review and reconciliation.<sup>6</sup>

With respect to the other provisions that must be included in an electric company's restructuring plan, the Company has provided an estimate and detailed accounting of total transition costs eligible for recovery, and a description of its strategies to mitigate transition costs. In addition, the Company proposes charges for the recovery of transition costs.

The Company also provides unbundled rates for generation, distribution, transmission, and other services, and proposed programs to provide universal service for all customers. The Company includes procedures for ensuring direct retail access to all electric generation suppliers.

Further, Fitchburg proposes programs and mandatory charges to promote DSM<sup>7</sup> and to support the development and promotion of renewable energy projects. Finally, the Company discusses the impact of its restructuring plan on the Company's employees and the communities within its service territory. Therefore, the Company's restructuring plan includes the provisions required by the Act.

While the rates for standard offer and default service are approved here, the specific language in the tariffs will be reviewed in D.P.U./D.T.E. 97-65.

The Department will investigate the design of the DSM programs in the Company's five-year energy efficiency plan.

To issue an initial Order, the Department must determine that the Company has identified and described the costs eligible for recovery. In order to make this determination, the Department has conducted an initial audit of Fitchburg's proposed restructuring plan, including an accounting of the costs eligible for recovery, subject to further review and reconciliation. Based on an initial review of information on file with the Department, we conclude that the Company has presented the method used for the calculation of the transition charge and described the costs eligible for recovery.

Therefore, the Department finds that Fitchburg's restructuring plan provides the required rate reduction and retail access for all customers after March 1, 1998, and includes the nine essential provisions of the Act. Accordingly, the Department, for the purposes of an initial Order, approves the Company's restructuring plan, subject to further review and reconciliation. The initial order provision of the Act allows statewide implementation of electric restructuring by March 1, 1998. No interim finding in this initial order may be cited to estop the Department from making variant or different findings upon a more intensive review of the Company's restructuring plan. The Department will investigate the Attorney General's arguments in this more intensive review.

# IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the tariffs submitted on December 31, 1998; M.D.T.E. Nos. 1 through 18, by Fitchburg Gas and Electric Light Company be and hereby are APPROVED

subject to further review and reconciliation; and it is

 $\overline{FURTHER\ ORDERED}$ : That the tariffs for retail access shall apply to electric service on or after March 1, 1998; and it is

<u>FURTHER ORDERED</u>: That the petition of Fitchburg Gas and Electric Light Company concerning its Electric Restructuring Plan, for the purposes of an initial order and subject to further review and reconciliation be and hereby is APPROVED.

By Order of the Department,
Janet Gail Besser, Chair
John D. Patrone, Commissioner
James Connelly, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

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